BEFORE THE

 FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.

DA 94-99

In the Matter of)
)
800 Data Base Access Tariffs and the) CC Docket No. 93-129
)
800 Service Management System Tariff)

ORDER

Adopted: January 31, 1994 Released: January 31, 1994

By the Acting Chief, Common Carrier Bureau

I. INTRODUCTION

1. On July 19, 1993 the Bureau released an order,[1] designating issues in our investigation of the 800 data base access tariffs. That order required each local exchange carrier (LEC) to disclose its computerized cost model on the record if the justification for its rates is based on the use of the model. Alternatively, if a LEC preferred not to disclose its computer model, the order allowed the LEC to develop its costs by other methods, provided that those methods are disclosed to the public on the record.[2]

2. Three petitions were filed seeking waiver of those requirements[3] and the Bureau requested comments on the petitions.[4] Seven parties filed comments on the petitions.[5]

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[1] *800 Data Base Access Tariffs and the 800 Service Management System Tariff, Order Designating Issues for Investigation*, CC Docket 93-129, 8 FCC Rcd 5132 (1993) (*Designation Order*).

[2] *Id.* at 5135-36

[3] Bell Atlantic, Pacific Bell, Nevada Bell, Southwestern Bell, BellSouth, NYNEX and Ameritech filed a joint Petition for Waiver on September 16, 1993 (Joint Petition). US West, which uses a model other than CCSCIS, filed a Contingent Petition for Waiver on September 17, 1993, asking that the Commission waive the disclosure requirements if we interpreted the order to require disclosure of its model. GTE Service Corporation filed a Petition for Waiver on September 20, 1993.

[4] *See also*, *Public Notice, Participating Bell Operating Companies, US West and GTE Request Waivers of Requirement to Disclose Cost Support*, 8 FCC Rcd 7328 (1993) (established pleading cycle for comments on LEC petitions for waiver of cost disclosure requirements in this proceeding).

[5] Comments on the petitions were filed by Ad Hoc Telecommunications Users Committee, Allnet Communications, Cincinnati Bell, MCI Telecommunications Corporation, National Data Corporation, Northern Telecom and the Sprint Communications Company.

II. BACKGROUND

3. The Commission stated that the 800 database services provided by the LECs would be divided into two major categories, the basic query service[6] and vertical features.[7] Basic query service was classified as a "restructured" service by the Commission. Under price cap regulation, a carrier's revenue from a restructured service generally cannot exceed the revenue that it received from the old service. Because of this limitation, a carrier does not need to provide detailed cost support for the rates for a restructured service. However, in the present proceeding, the Commission also allowed the LECs exogenous treatment for the costs they specifically incurred to implement and operate the basic 800 database service.[8] Exogenous treatment allows the LEC to make a one-time adjustment to its price cap indices when extraordinary costs are incurred in certain instances. Therefore, for the basic 800 database services, the LECs only need to provide cost support for their exogenous cost claims. The second major category of 800 database services is vertical features. Vertical features are optional. In addition, interexchange carriers (IXCs) are capable of performing some vertical features within their own networks. The Commission classified the LECs' vertical features as new services. Under the price cap rules, the LECs are required to provide cost support for new services.[9]

4. Bell Communications Research (Bellcore) has developed several cost models that the LECs use to determine the investment required to produce one unit of output.[10] US West developed its own model, the Switching Cost Model (SCM), and GTE developed its own model. The models allocate investment when a switch, for example, provides different kinds of services. In the Open Network Architecture (ONA) proceeding, many of the LECs used a computerized cost model called the Switching Cost Information System (SCIS) to analyze a switch to determine the investment needed to provide each of the many ONA services that the switch is capable of providing. The SCIS model analyzes the switches in the LEC networks.

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[6] "Basic query service" includes the information necessary to route the call to the interexchange carrier (IXC) that handles it. It also includes area of service routing at the LATA level, a service capable of geographically dividing traffic between two or more interexchange carriers.

[7] "Vertical features" are the services beyond merely routing the call to the correct IXC. They include dividing traffic to a single 800 number among two or more IXCs based on such factors as the time of day or based on a percentage allocation of traffic.

[8] *Provision of Access for 800 Service, Second Report and Order*, 8 FCC Rcd 907, 911 (1993).

[9] A LEC introducing new services is required to submit its engineering studies, time and wage studies, or other cost accounting studies to identify the direct costs of providing the new service. Once the direct costs have been identified, LECs add overhead costs to derive the overall price of the new service. The cost support also includes the following information: (1) a study containing a projection of costs for a representative 12 month period; (2) estimates of the effect of the new service on traffic and revenues, including the traffic and revenues of other services and (3) supporting workpapers for estimates of costs, traffic and revenues. *See Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, Report and Order & Order on Further Reconsideration and Supplemental Notice of Proposed Rulemaking*, 6 FCC Rcd 4524, 4531 (1991).

[10] In the present case, the output could be one basic 800 data base query or one POTS translation.

In the ONA proceeding, the Commission stated that unbundled services within the switched access element would be divided into Basic Service Arrangements (BSAs) and Basic Service Elements (BSEs). Unbundling under ONA was regarded by the Commission as a restructure and the LECs were required to provide new services cost support for the BSEs. A model was necessary in the ONA proceeding because various ONA services use different combinations and amounts of switch resources. In that proceeding, the Bureau required the LECs to disclose edited versions of SCIS software and documentation to interested parties and required that actual price lists and other vendor information be disclosed to intervenors. Further, the Bureau required the LECs to subject the SCIS model to an independent audit by an accounting firm. However, the Bureau permitted the LECs to limit the interested parties' access to the disclosed information by, for example, only allowing one attorney and two cost accounting experts for each intervenor to examine the information and by requiring that inspections of the model be on LEC or Bellcore premises. The Commission affirmed those disclosure procedures but, in doing so, stated that "it did not expect the unusual procedures adopted for review of the ONA tariffs to be employed in the future without substantial justification."[11] In the present proceeding, the LECs used the Common Channel Signalling Cost Information System (CCSCIS) to develop the investment for their vertical features. In addition, some LECs calculated some of their exogenous costs by using CCSCIS.[12] This model is designed to analyze the equipment in the Signalling System 7 network to determine the investment required to produce one unit of a particular service.

III. JOINT PETITION

5. Petition: The participating Bell Operating Companies (BOCs) filed a joint Petition for Waiver which requested that they be excused from what they interpret as the Designation Order's requirement that they disclose, on the record, the CCSCIS cost model. All of these companies license the CCSCIS model from Bellcore and used it to develop at least some of their cost support for the 800 data base tariffs. The Joint Petition contends that the CCSCIS model is a trade secret and confidential commercial information.[13] The Joint Petition also argues that engineering and cost information provided by the switch vendors is proprietary to those vendors. They argue that the "switch vendors have indicated to Bellcore that they might deny Bellcore their proprietary engineering and cost data for the CCSCIS model if disclosure were a possibility."[14] The Joint Petition states that disclosure is properly denied because Bellcore is likely to suffer competitive harm in the market for competitive cost modeling services.[15] Bellcore has spent $2.4 million and five years in developing the CCSCIS

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[11] *Commission Requirements for Cost Support Material to be Filed with Open Network Architecture Access Tariffs*, FCC 93-531 at n.17 (December 15, 1993) (*Review of SCIS Disclosure Order*). *See also Open Network Architecture Tariffs of Bell Operating Companies, Order*, CC Docket 92-91, FCC 93-532 at n.163. (December 15, 1993) (*Final ONA Order*) (in an order released on the same day, restates that disclosure procedures in the ONA proceeding were "unusual" and says that carriers will "bear a substantial, initial burden of demonstrating the circumstances that preclude reliance on publicly available data.")

[12] The models are used to calculate investment when a piece of equipment is used to provide more than one service and must be allocated among them. If equipment provides only one service, a model need not be used since no allocation is necessary.

[13] Joint Petition at 7.

[14] *Id.* at 7.

[15] *Id.* at 8.

model and expects to receive up to $3.5 million in licensing revenue over a five year period.[16] The Joint Petition argues that the disclosure requirements should be similar to those employed in the ONA proceeding[17] and suggests an alternative method of disclosure which contains four elements; (1) complete disclosure of all CCSCIS software and documentation to Commission staff; (2) Bellcore assistance to Commission staff in their evaluation of the model, including sensitivity analysis, workshops and training sessions; (3) certification by equipment vendors that their data, which is used by the CCSCIS model to calculate costs, has been properly reflected in the cost model, and (4) release, to interested parties that execute an appropriate non-disclosure agreement, of edited documentation and the training of interested parties through workshops. Under this proposal the interested parties would not receive information such as vendor equipment prices, resource consumption figures, equipment capacities or algorithms or other information "considered proprietary by Bellcore..."[18] The interested parties would not receive even an edited version of the software for the CCSCIS model. The affidavits attached to the Joint Petition also argue that, contrary to the statements in the *Designation Order*,[19] the LECs need a cost model to develop costs for 800 data base service, although the affidavits only expressly claim that the model is essential to calculate vertical services investment.[20]

6. Comments and Replies: With the exception of one LEC and one equipment

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[16] *Id.* at 6-7.

[17] Joint Petition at 4, *citing Commission Requirements for Cost Support Material to be Filed with Open Network Architecture Access Tariffs*, 7 FCC Rcd 521, 524 (Com.Car.Bur. 1991).

[18] Joint Petition at 11.

[19] *Designation Order*, 8 FCC Rcd at 5135 and n.24.

[20] Declaration of Julian L. Brice, Manager-Cost Operations for Ameritech (July 28, 1993); Declaration of Ruth Durbin, Assistant Manager - Access Filings for Bell Atlantic (July 28, 1993); Declaration of Hilmar F. Durden, Manager, Economic Analysis for BellSouth (July 28, 1993); Declaration of Curt Hopfinger, District Manager-Product Development Costs and Regulatory for Southwestern Bell (July 27, 1993); Declaration of James J. Lechtenberg, Director of Marketing and Product Information for Pacific Bell (July 28, 1993); Declaration of Francis J. Murphy, Associate Director - Interstate Access and Carrier Services for Teleselector Resources Group (July 28, 1993); Declaration of Robert Sigmon, Vice President - Regulatory Affairs for Cincinnati Bell Telephone Company (July 28, 1993); Declaration of Martin W. Clift, Director of Regulatory Matters for the Southern New England Telephone Company (July 29, 1993); Declaration of Kenneth A. Moreland, Staff Administrator - New Services Pricing, GTE Telephone Operations (July 28, 1993); Letter from Richard D. Lawson, Director of Federal Regulatory Relations, United Telephone Companies, to Gregory J. Vogt, Federal Communications Commission (July 29, 1993) (did not use a model but would have had to use one if they had wanted to precisely determine the capital costs for vertical features); Affidavit of Barbra H. Stock, Manager, Switching Cost Modeling, US West Communications, Inc. (July 29,1993) (calculation of most 800 data base costs without use of the model would be "extremely difficult and expensive," calculation of vertical features costs without the model would be impossible).

vendor,[21] the commenters generally oppose the waiver requests in the petitions.[22] Ad Hoc argues that the petitions fail to deal with the distinction between using a cost model to determine exogenous costs for basic query service and using it to identify non-exogenous costs associated with 800 database vertical services. National Data states that, without the cost models or other methodology to provide some context for the cost data which the LECs have produced, the cost information produced by the LECs is meaningless. National Data argues that the interests of the LECs can be safeguarded through protective orders.[23] Northern Telecom objects to disclosure of the costing models because it would result in the public disclosure of Northern Telecom's trade secrets, which would place it at a severe competitive disadvantage with respect to other equipment vendors.[24] Northern Telecom argues that the Bureau was mistaken when it indicated in the *Designation Order* that the costing models used in this proceeding do not contain the confidential information of third parties.[25] Sprint states that the extreme measures implemented to protect the confidentiality of the models and vendor data in the ONA proceeding seriously impeded meaningful analysis of the reasonableness of ONA rates by intervenors.[26]

7. The participating BOCs replied that some LECs were able to develop basic query exogenous costs without the use of a cost model because they used only dedicated facilities to provide the service. However, the participating BOCs argue that other LECs use shared facilities, such as SCPs and links, to provide basic 800 data base query service and therefore need to use CCSCIS to develop exogenous costs for that service. However, the participating BOCs acknowledge that even some LECS that have claimed exogenous treatment for shared facilities have developed ancillary means for identifying costs specific to 800 database and did not need to use a cost model to determine the investment needed to provide the 800 database basic query service.[27]

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[21] Cincinnati Bell's Comments at 1; Northern Telecom's Comments at 2.

[22] Ad Hoc Comments at 1; Allnet Comments at 1; MCI Comments at 1; National Data Comments at 1; Sprint Comments at 6.

[23] National Data Comments at 7.

[24] Northern Telecom's Comments at 2. Equipment vendors also object to the disclosure of their confidential information in letters attached as exhibits to the Joint Petition. *See* Letter from M.R. Bruening to James F. Britt (August 23, 1993) ("The degree of competitive harm is such that even the smallest risk that the non-disclosure agreement might be violated is sufficient...to lead AT&T-[Network Systems] to the conclusion that this recommended approach is not acceptable."); letter from William R. Tempest to James Britt (August 24, 1993) (says that disclosure under protective agreements is "unacceptable. Regardless of the safeguards imposed, at least one of our major competitors would have access to highly sensitive information concerning our products."); letter from John Beall to James F. Britt (August 13, 1993) ("information provided by Northern Telecom to Bellcore in connection with the CCSCIS model is similar to that provided...with respect to Bellcore's SCIS model...." It would object to disclosure under a protective agreement.); letter from L. Michelle Boeckman to Robert McKenna (September 16, 1993) ("strenuously protests ...proposed public release in connection with the 800 data base tariffs of Ericsson's proprietary information....").

[25] Northern Telecom Comments at 2, *citing Designation Order*, 8 FCC Rcd at 5135.

[26] Sprint Comments at 3.

[27] Participating BOCs' Reply at 10.

IV. US WEST PETITION

8. US West argues that its Switching Cost Model (SCM) contains confidential US West financial information and is a US West trade secret. It also asserts that the vendor inputs to the model are extremely confidential and claims that a Commission requirement that they be disclosed could cause the vendors to refuse to provide confidential information in the future.

V. GTE PETITION

9. The GTE Service Corporation (GTE) argues that it used a cost model which is proprietary to it and contains information proprietary to some of its vendors. GTE states that the model contains information that constitutes trade secrets. GTE contends that it has furnished enough information for the Commission to resolve all controversies without using confidential data and that there is no need for further submissions.[28]

VI. DISCUSSION

10. All of the petitions raise the same issue and will be discussed together. The issue before us is whether, in the exercise of our discretionary authority, we should grant a waiver of our requirement that the LECs disclose the cost support for the investment costs for their 800 data base tariff filings.[29] As the Commission has previously noted,[30] this issue requires that we address two competing but fundamental policies. The first policy is that access to relevant information is preferred because it enables interested persons to participate fully in a Section 204 investigation, 47 U.S.C. § 204. The second and contrasting policy is the long-protected interest in maintaining the private, confidential status of commercial and financial information, including trade secrets.

11. In the present case, we believe that a disclosure of this information will aid the discharge of the agency's functions. The 800 telecommunications services are widely used by business to provide customer support, marketing and transaction processing. The database query rates that are established in this proceeding will be reflected in the overall 800 rates that end-users must pay. Portability of 800 numbers, and the competition among interexchange carriers that it makes possible, are dependant in part on establishing reasonable query rates in this proceeding. Excessive query charges could diminish the benefits that 800 number portability and the resulting competition can bring to end-users of 800 telecommunications service by diminishing demand for this service. The 800 database services are provided through an infrastructure created to provide a wide range of database services. The CCSCIS model calculates how much investment is required to provide each service. In turn, that investment is used to calculate many of the direct costs of providing a service. If a model produces an inaccurate investment figure, either because the model is flawed or because it has been manipulated, that inaccuracy will be translated into inaccurate costs for the service in question. The benefit of allowing interested parties to examine and test the cost models is that they will be able to either detect flaws in the model or find ways that it could potentially be manipulated. With this knowledge, the interested parties could then examine the direct cases of the LECs to determine whether the investment calculated by the computer models is affected by any of these

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[28] GTE Reply at 3.

[29] *Designation Order*, 8 FCC Rcd 5135-36.

[30] *See Commission Requirements for Cost Support Material to be Filed with Open Network Architecture Access Tariffs*, 7 FCC Rcd 1526, 1531 (Com.Car.Bur. 1992) (*SCIS Disclosure Order*).

sources of error. Interested parties can bring experience and resources to this analysis that are not otherwise available to the Commission, thus improving the accuracy of the rates and thereby benefiting the public. We do not find the disclosure alternative proposed in the Joint Petition to be an acceptable alternative because the participating BOCs propose that interested parties would receive only edited documentation and would not receive any version of the software.

12. The crux of the petitioners' arguments is that they can only develop rates for 800 data base by using a cost model that contains confidential and proprietary information. However, with regard to costs incurred to provide basic query service, only some companies need to allocate costs for shared equipment. Even those companies need only use it for a relatively small portion of their investment, the shared facilities. The participating BOCs concede that even some LECs that allocate shared facilities have developed "ancillary mechanisms" for differentiating the 800 database exogenous costs from costs related to other services.[31] The Commission has not yet decided whether to grant exogenous treatment for some or all of the claimed costs, but we find that they can be allocated by other means, such as the relative weighted volume of queries for each of the services. Therefore, if contractual obligations to third party vendors prevent the LECs from disclosing their cost models on the record, they should use another method of developing cost support that can be disclosed on the record. The LECs believe that such methods are not sufficiently precise. We would encourage them to be as precise as possible but, if the choice comes down to one between precision and public disclosure, we opt for public disclosure. This should eliminate the need to rely on the equipment vendors' confidential and proprietary information and, therefore, eliminate their concerns.

13. In the ONA proceeding, the Commission affirmed the Bureau's conclusion that the information provided by the equipment vendors was confidential and proprietary and exempt from disclosure under Section 552(b)(4) of the Freedom of Information Act, 5 U.S.C. § 552(b)(4). Further, the Commission affirmed the Bureau's finding that a non-disclosure agreement alone was not sufficient to protect the vendor's interests or the Commission's interest in program effectiveness.[32] The Commission stated that access to vendor pricing information in the highly competitive switch market would significantly harm competitors in that market.[33] Those procedures allowed the LECs to provide cost support based on models that were disclosed to interested parties only on a restricted basis. However, the Commission has recognized that unusual procedures were essential in that proceeding and would not be employed in the future without substantial justification.[34]

14. The LECs have failed to demonstrate that using the ONA approach is reasonable in this case. There is good reason for using different approaches in the two proceedings. In the ONA proceeding, the LECs had to calculate the investment required to produce many dissimilar services that could be provided through the same switch. It was also critical that we calculate costs for the Basic Service Elements (BSEs) as accurately as possible. In the 800 database proceeding, however, the shared facilities are currently only used to provide a few services of similar nature. These services typically involve queries to a database and the relative costs can be allocated by some means other than the CCSCIS cost model. The LECs argue that the determination of vertical features investment involves the kind of calculations that require a cost model. While the LECs are correct, the reality is that the seven BOCs estimate

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[31] Participating BOCs' Reply at 10.

[32] *Final ONA Order* at ¶ 78.

[33] *Review of SCIS Disclosure Order*, at ¶ 13.

[34] *Review of SCIS Disclosure Order*, at n.17; *Final ONA Order* at n.163.

annual revenues of approximately $69 million from basic query services but only $6 million from vertical services.[35] We find that the vertical services are incidental to the basic query service and we conclude that the public interest would suffer more by failing to make public disclosure of the cost support for both basic 800 database services and vertical features than it would gain by having a more precise calculation of costs for vertical features. In the present case, the petitioners have not shown substantial justification for using non-disclosed cost support because, for the calculation of the exogenous costs incurred to provide basic 800 database query service, there are alternative methods that can be disclosed without revealing proprietary or confidential LEC or third party information. Vertical features involve such relatively small revenues that they are incidental to the basic 800 database query and the LECs' desire to use cost models to calculate vertical features rates does not provide substantial justification for the LEC's request to rely on non-disclosed cost support.

15. Alternatively, some LECs may prefer to continue to use their cost model. We would allow them to do so, provided that they release all relevant information to interested parties that signed protective agreements. In this situation, we find that disclosure to the public is not necessary as long as interested parties that execute protective agreements are given reasonable access to the information. We would enforce such agreements by issuing an order requiring interested parties to honor the agreements. We will entertain revised waiver requests from LECs wishing to pursue this option.

16. Accordingly, IT IS ORDERED that the petitions for waiver of the *Designation Order's* requirement to disclose 800 database cost support filed by the participating BOCs, US West and GTE, ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz

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[35] Initial reports of actual demand for vertical services indicate that some of the BOCs' revenue forecasts have far exceeded the actual demand. *See* letter from R.W. Fleming to Secretary, Federal Communications Commission (January 13, 1994) (BellSouth projected $2,307,000 in vertical services revenue during the first year, actual revenue for the five months from April 30, 1993 to September 30, 1993 was $8,902); letter from Maureen Keenan to William F. Caton (December 28, 1993) (Bell Atlantic projected $326,846 in vertical services revenue during the first year, actual revenue for the period from 5/93 to 9/93 was $643). These are the only two BOCs for which data is available.